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Supreme Court, U.S.
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No. 86-2016

In the
Supreme Court of the United States
October Term, 1986

GREG MYERS, etc., et al.,

vs.

Petitioners,

R. KATHLEEN MORRIS, etc.,

and

Respondents,

DONALD BUCHAN, etc., et al.,

vs.

Petitioners,

R. KATHLEEN MORRIS, etc.,

Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eighth Circuit**

**RESPONSE TO PETITION FOR CERTIORARI
BY GUARDIANS AD LITEM
PAUL THOMSEN, DIANE JOHNSON, AND JOHN MANAHAN**

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A. QUESTIONS PRESENTED FOR REVIEW

I. Did the lower courts properly rule that court-appointed guardians ad litem for children involved in alleged sexual abuse proceedings are immune from damage liability under 42 U.S.C. Sec. 1983?

The Court of Appeals for the Eighth Circuit held in the affirmative.

II. Did the lower courts properly rule that the record did not support the plaintiffs' bare allegations that the court-appointed guardians ad litem were involved in a conspiracy?

The Court of Appeals for the Eighth Circuit held in the affirmative.

B. LIST OF PARTIES

The complete list of parties appears in the Joint Appendix. (J.A. A-1)



C. TABLE OF CONTENTS AND TABLE OF AUTHORITIES

TABLE OF CONTENTS

	<u>Page</u>
Questions Presented for Review.	1
Table of Authorities.	2
Opinions Below.	3
Jurisdiction.	3
Statutes Involved	3
Statement of the Case	5
Summary of Argument	9
Argument in Opposition to Writ.	10

TABLE OF AUTHORITIES

Statutes:	<u>Page</u>
Minn. Stat. Ann. sec. 260.155(4) (West 1982 and Supp. 1987)	6,12
42 U.S.C. Sec. 1983	10
Cases:	<u>Page</u>
<u>Anderson v. Creighton</u> , 55 U.S.L.W. 5092 (No. 85-1520, June 25, 1987)	14
<u>Anthony v. Baker</u> , 767 F.2d 657 (11th Cir. 1985)	19
<u>Ashelman v. Pope</u> , 793 F.2d 1072 (9th Cir. 1986).	19
<u>Briscoe v. LaHue</u> , 460 U.S. 325 (1983)	11
<u>Harlow v. Fitzgerald</u> , 457 U.S. 800 (1982).	14
<u>Hooks v. Hooks</u> , 771 F.2d 935 (6th Cir. 1985).	19



	<u>Page</u>
<u>In re Scott County Master</u> <u>Docket</u> , 618 F.Supp. 1534 (D. Minn. 1985)	8
<u>Kurzawa v. Mueller</u> , 732 F.2d 1456 (6th Cir. 1984)	10
<u>Malley v. Briggs</u> , 475 U.S. 335 (1986)	14
<u>Mitchell v. Forsyth</u> , 472 U.S. 511 (1985)	14,19
<u>Myers v. Morris</u> , 810 F.2d 1437 (8th Cir. 1987)	9,11,13 14,17,19
<u>Stump v. Sparkman</u> , 435 U.S. 349 (1978)	11
<u>Wright v. South Arkansas</u> <u>Regional Health Center, Inc.</u> , 800 F.2d 199 (8th Cir. 1980) . .	19

D. OPINIONS IN THE COURTS BELOW

In re Scott County Master Docket, 618
F.Supp. 1534 (D. Minn. 1985); Myers v.
Morris, 810 F.2d 1437 (8th Cir. 1987).

E. JURISDICTIONAL GROUNDS

See Petition for Certiorari.

F. CONSTITUTIONAL PROVISIONS, ORDINANCES, AND REGULATIONS WHICH THE CASE INVOLVES

In addition to those specified by
Petitioners in their Petition for Writ of



Certiorari these cases involve the following Minnesota statute:

Minn. Stat. Ann. sec. 260.155(4)

(West 1982 and Supp. 1987)

Subd. 4. Guardian ad litem. (a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging neglect or dependency. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court.

(b) The court may waive the appointment of a guardian ad litem pursuant to clause (a), whenever counsel has been appointed pursuant to subdivision 2 or is retained otherwise, and the court is satisfied that the interests of the minor are protected.

(c) In appointing a guardian ad litem pursuant to clause (a), the court shall not appoint the party, or any agent or employee thereof, filing a petition pursuant to section 260.131.



G. STATEMENT OF THE CASE

During 1983 and 1984, law enforcement officials in Scott County, Minnesota conducted an investigation into allegations concerning the sexual abuse of children. As a result of this investigation, the Scott County Attorney filed criminal charges against Petitioners Greg Myers, Jane Myers, Donald Buchan and Cindy Buchan. Shortly after these charges were filed, the Scott County Department of Human Services commenced neglect and dependency proceedings with respect to Petitioners' minor children. At the time these proceedings were commenced, Respondents Paul Thomsen, Diane Johnson and John Manahan were appointed by the Scott County Family Court to serve as guardians ad litem for the Petitioners' minor children. Respondent Thomsen was appointed by the Court as guardian ad litem for the Myers children. Diane



Johnson and John Manahan were appointed to serve as guardians for the Buchan children. These appointments were made pursuant to Minn. Stat. Ann. sec. 260.155, subd. 4 which provides in relevant part as follows:

(a) The court shall appoint a guardian ad litem to protect the interests of the minor when it appears, at any stage of the proceedings, that the minor is without a parent or guardian, or that the minor's parent is a minor or incompetent, or that the parent or guardian is indifferent or hostile to the minor's interests, and in every proceeding alleging neglect or dependency. In any other case the court may appoint a guardian ad litem to protect the interests of the minor when the court feels that such an appointment is desirable. The court shall appoint the guardian ad litem on its own motion or in the manner provided for the appointment of a guardian ad litem in the district court.

Minn. Stat. Ann. sec. 260.155(4).

In their capacity as guardians ad litem, Respondents Thomsen, Johnson and Manahan appeared at all court proceedings involving their wards to advocate on



their wards' behalf. The guardians or their designees attended all sessions in which the children were interviewed by investigative personnel. By virtue of the family court's orders, these guardians were given the express authority by the Court to participate in interviews of the children as they deemed appropriate. The guardians helped arrange psychological evaluations for their wards and regularly reported to the Scott County Family Court on the status of these children.

The criminal charges against Petitioners were dismissed in late 1984. The Petitioners then commenced the actions now before this Court. Although the Petitioners have alleged a wide range of misconduct against some of the other Respondents in this matter, the actual allegations against the Respondent guardians are quite limited. The guardians are alleged to have coerced



Petitioners' children into implicating their parents by interrogating them, and by allowing others to do the same. The Respondent guardians are also alleged to have injured the Petitioners' children by depriving them of contact with their parents during the pendency of the neglect proceedings. Finally, Petitioners have accused the Respondent guardians of being grossly negligent and of participating in a conspiracy to deprive them of their rights.

In May of 1985 the Respondent guardians brought Motions for Summary Judgment. These Motions were granted by the District Court in June of 1985. The District Court later prepared a comprehensive opinion detailing the rationale for its ruling under the name In re Scott County Master Docket, 618 F.Supp. 1534 (D.Minn. 1985). (J.A. G-1) The Eighth Circuit Court of Appeals affirmed the judgment of the District



Court in favor of the Respondent guardians, on the grounds of both qualified and absolute immunity. The Court of Appeals, in addition, concluded that the Petitioners had failed to plead a colorable claim for conspiracy against the guardians and also found that there was no genuine issue of fact with respect to the conspiracy claim against these Respondents. Myers v. Morris, 810 F.2d 1437 (8th Cir. 1987) (J.A. F-1).

In their Petition for Certiorari Petitioners have raised various grounds for seeking further review. The Respondent guardians ad litem will only address, in response, those issues specifically addressed to the guardians.

H. SUMMARY OF ARGUMENT

The federal courts that have addressed the issue have unanimously held that court-appointed guardians ad litem are entitled to share in the absolute



immunity that protects all judges and judicial officers. The Eighth Circuit Court of Appeals followed well-established authority enunciated by this Court in finding that guardians ad litem were, in addition, protected by qualified immunity. Petitioners failed to provide the Court with any facts or inferences suggesting a conspiracy between the guardians ad litem and others to engage in conduct in violation of Petitioners' rights.

I. ARGUMENT IN OPPOSITION TO THE WRIT

1. Immunity

Both the District Court and the Court of Appeals properly ruled as a matter of law that the court-appointed guardians ad litem for the children in this matter were immune from liability under 42 U.S.C. Sec. 1983. Prior federal decisions are unanimous on this point. See, e.g., Kurzawa v. Mueller, 732 F.2d 1456 (6th Cir. 1984). Court-appointed



guardians ad litem are entitled to absolute immunity because of their integral role in the judicial process. Briscoe v. LaHue, 460 U.S. 325 (1983). In addition, in light of their court appointment as quasi-judicial officers, these guardians ad litem are entitled to share in the absolute immunity which is afforded to the court itself. Stump v. Sparkman, 435 U.S. 349 (1978).

As the Eighth Circuit properly held, the guardians ad litem have absolute immunity for any damage claims based on the function of testifying before the family court. 810 F.2d at 1466 (J.A. F-60) In addition, under the prior cases, this immunity extends beyond oral testimony to the recommendations and reports provided to the family court.

Under the Minnesota statutory scheme the court is required to appoint a guardian ad litem for any child who is the subject of neglect/abuse proceedings



such as those involved in these cases. Minn. Stat. Ann. sec. 260.155(4) (West 1982 and Supp. 1987). In this role, guardians ad litem act as an arm of the judiciary, performing some of the necessary judicial functions required to be performed by the court or its appointees.

The federal courts which have considered the question, including the Eighth Circuit in this case, have uniformly held that guardians ad litem in child abuse proceedings play an integral role in the judicial process. While the family court ultimately decides what is in the best interest of the child, the guardian ad litem performs this peculiarly judicial role on a day-to-day basis under court direction as long as the child is in the court's custody. As such, the guardians are entitled to share in the absolute immunity that protects all judges and judicial officers. The

Eighth Circuit opinion so held, and cited substantial authority for this conclusion. 810 F.2d at 1467 (J.A. F-60) Petitioners cite no authority to the contrary. Therefore, unless this Court is inclined to rule that all of the reported cases on this point are incorrect, there would appear to be no basis for granting the petition for a writ of certiorari in this case.

In addition, the Eighth Circuit properly held that the guardians ad litem were protected by qualified immunity. 810 F.2d at 1466 (J.A. F-60) As this Court has repeatedly stated, governmental officials performing discretionary functions are shielded by qualified immunity from civil damage liability absent a pre-discovery showing that their actions were objectively legally unreasonable and were in violation of clearly established constitutional norms.

Harlow v. Fitzgerald, 457 U.S. 800 (1982); Mitchell v. Forsyth, 472 U.S. 511 (1985); Malley v. Briggs, 475 U.S. 335 (1986). Indeed, just this year the Court strongly reaffirmed this rule in Anderson v. Creighton, 55 U.S.L.W. 5092 (No. 85-1520, June 25, 1987).

As the Eighth Circuit Court noted in this case, there simply are no clearly established constitutional norms with respect to a guardian ad litem's role in child sexual abuse proceedings. 810 F.2d at 1466 (J.A. F-60) In no way can it be said that any of the acts alleged against these guardians were inconsistent with pre-existing law, and the Petitioners do not even purport to cite any law to support such a conclusion. It follows that the result below was correct based on the independent ground of qualified good faith immunity.

The Petitioners' claims against these guardians ad litem come down to the fact



that the guardians believed the children's statements of sexual abuse rather than the parents denial of same, and then acted on those beliefs. While Petitioners suggest that the guardians exercised no independent judgment as ordered by the court, what they really mean is that the guardians exercised their independent judgment contrary to the parents' asserted wishes. What these Petitioners fail to take into account is that the very existence of a guardian ad litem in child sexual abuse proceedings is based on the possibility that the children's interests are not consonant with the parents' interests. But for the substantial allegations and evidence of sexual abuse by these Petitioners, these guardians ad litem would never have been appointed. While the Petitioners may well believe that the guardians should have believed them rather than the children, there is simply no legal

authority for the proposition that the guardians' judgment in these matters -- even if erroneous -- gives rise to some legal right in the parents to pursue sec. 1983 actions.

Since the unanimous Eighth Circuit panel properly applied the federal law with respect to the guardians ad litem, and since there is no split in authority among the circuits concerning the question, we respectfully submit that the Petition should be denied with respect to the guardians ad litem.

2. Conspiracy

In their Petition for Certiorari Petitioners failed to inform this Court that the Eighth Circuit, after examination of the voluminous record in these cases, found no facts or inferences suggesting any conspiracy. The Eighth Circuit specifically held that these cases lacked facts or inferences suggesting any mutual agreement between



the guardians ad litem and others to engage in conduct in violation of the Petitioners' rights. 810 F.2d at 1454 (J.A. F-37) Indeed the Court made special note that Petitioners "provided virtually no factual specificity in their complaints as to the guardians". 810 F.2d at 1466 (J.A. F-60) The court noted that most of the injuries which the guardians ad litem allegedly conspired with others to inflict preceded their involvement in these cases. 810 F.2d at 1453 (J.A. F-36). None of the Respondent guardians were appointed to assist a child until after that child had already been removed from home upon the arrest of one or both parents, and the family court had determined that a juvenile protection matter existed. Custody of each child was by then in the family court and the child was living in foster care. 810 F.2d at 1453 (J.A. F-36)



Furthermore, the Eighth Circuit specifically found that the acts which the guardians performed -- including attending court appearances, making recommendations to the family court, questioning children about their versions of events and reporting statements and opinions concerning abuse -- were expressly or implicitly within their professional duties. The family court expressly authorized the guardians to participate in interviews between the wards and law enforcement personnel. 810 F.2d at 1453 (J.A. F-36) The Eighth Circuit correctly concluded that Petitioners' conclusory and unsupported allegation of conspiratorial purpose failed to defeat an assertion of qualified immunity by the guardians ad litem who were otherwise entitled to that defense. In so holding, the Eighth Circuit relied on its earlier decision in



Wright v. South Arkansas Regional Health Center, Inc., 800 F.2d 199 (8th Cir. 1980) and not on Ashelman v. Pope, 793 F.2d 1072 (9th Cir. 1986), as Petitioners suggest. 810 F.2d at 1453 (J.A. F-36) In Wright, the Eighth Circuit applied this Court's decision in Mitchell v. Forsyth, 472 U.S. 511 (1985) in determining whether on the record before the court there was a genuine issue of improper purpose so as to defeat an assertion of qualified immunity.

Finally, Petitioners contend that the Eighth Circuit's decision is in conflict with the Sixth Circuit's decision in Hooks v. Hooks, 771 F.2d 935 (6th Cir. 1985) and the Eleventh Circuit's decision in Anthony v. Baker, 767 F.2d 657, 662 (11th Cir. 1985). There is no conflict. In both Hooks and Anthony the courts found that the record contained sufficient evidence from which a jury could find either that a party's conduct

was motivated by malice, thus defeating an assertion of qualified immunity, or that the record was sufficient to create a jury issue as to whether a party was a participant in a conspiracy to violate the plaintiff's civil rights. In this case, the Eighth Circuit could find no facts or inferences which would create a genuine issue of fact for the jury. The cases are not in conflict but merely reflect different results based on the record presented to the appellate court.

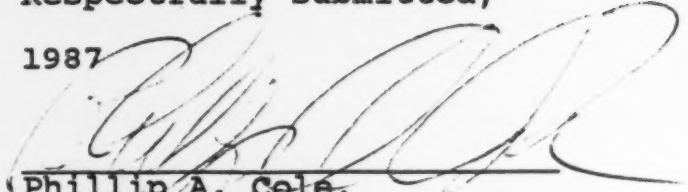
J. CONCLUSION

Respondent guardians ad litem respectfully request that this Court deny the Petition for Certiorari.



Respectfully submitted,

July 10, 1987



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